

Decision 05-01-044 January 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M), a California Corporation, and Leonard Soloniuk and Linda Ruckle-Soloniuk, as Individuals, for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land in Shasta County Pursuant to Public Utilities Code Section 851.

Application 04-09-021
(Filed September 23, 2004)

O P I N I O N

1. Summary

Pursuant to Pub. Util. Code § 851, we approve the sale and conveyance by Pacific Gas and Electric Company (PG&E) of a certain parcel of land located in Shasta County to Leonard Soloniuk and Linda Ruckle-Soloniuk (Buyers). We also approve an agreement between PG&E and the Commission's Office of Ratepayer Advocates (ORA) to refer the issue of proceeds of this sale to our gain-on-sale proceeding, Rulemaking (R.) 04-09-003.

2. Background

On September 23, 2004, PG&E filed this application for authority to sell and convey approximately 5.18 acres of land in Shasta County to Buyers for a purchase price of \$700,000. Buyers intend to demolish existing buildings on the property and develop the property into a new 44,000-square-foot medical office building to be known as the River Vista Office Development. Applicants state that the property has three dilapidated buildings that have little or no value, and

the purchase price reflects only the value of the land. A portion of the property (.82 acre) is subject to a road easement belonging to the City of Redding.

The property, located at 1050 North Court Street in Redding, was acquired by PG&E in 1924. It is paved with asphalt and includes three unused buildings (office, repair shop, and small heater room) and a double containment pad where an above-ground storage tank formerly was located. The property was used as a service center for gas and electrical distribution from 1926 through 1987. Between 1987 and 1994, the property was used as a parking facility for line equipment. As of December 31, 1994, the property was declared surplus.

Real estate appraisers Shaw & Associates completed an independent appraisal of the property in 2000 and stated that the highest and best use of the site would be as vacant land to be used for future office development.

Under the proposed transaction, PG&E's use of the property would be served through easements for an existing 6-inch gas line and for proposed underground and overhead cathodic protection facilities. PG&E states that reserving easements will be more advantageous to the company and its ratepayers than continuing to own the property. With the easements, the company retains all rights necessary for maintenance and operation of its gas line and proposed cathodic protection facilities while avoiding payment of property taxes and the cost of maintaining the property.

3. Withdrawal of Protest

ORA filed a protest of the application on October 28, 2004, objecting to PG&E's plan to book any gain on sale from the transaction for the benefit of shareholders. ORA urged instead that the issue of gain on sale be referred to R.04-09-003, our open rulemaking proceeding addressing gain-on-sale issues.

PG&E replied to the protest, arguing that gain on sale of land traditionally has gone to shareholders, but agreeing with ORA that the issue should be referred to the gain-on-sale rulemaking.

On December 17, 2004, PG&E and ORA filed a joint motion in which ORA withdrew its protest on the condition that the gain-on-sale issue is referred to R.04-09-003. PG&E and ORA also agreed to joint stipulated facts to assist the Commission in applying any future decision in R.04-09-003 to this sale. The following facts are uncontested:

1. The property consists of approximately 5.18 acres of real property and improvements located in an unincorporated area of Shasta County.
2. A portion of the property (0.82 acre) is burdened with a road easement of the City of Redding.
3. PG&E acquired the property in 1924 for a purchase price of \$163.
4. The property has been in ratebase since 1924 and will be removed from ratebase upon its sale.
5. Since 1994 the property has not been used and remains vacant.
6. The estimated 2004 revenue requirements for the property, including taxes, franchise requirements, and provision for uncollectible accounts is \$17,069.
7. The property's annual property tax for 2003-2004 was \$8,449.
8. The property's annual operation and maintenance cost is \$2,283.
9. PG&E's 2003 authorized cost of capital for distribution is 11.22% on equity and 9.24% on ratebase.

10. The pre-tax gain on sale is estimated to be \$657,719, and the after-tax gain on sale is estimated to be \$389,725.
11. The net book value of the improvements on the land is \$47,052.
12. PG&E proposes to flow proceeds equal to the net book value of the improvements back to ratepayers through a credit to the depreciation reserve, and ORA does not oppose this specific ratemaking treatment.

4. Discussion

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (Pub. Util. Code § 851.) The parcel of land at issue here is not necessary for utility service so long as PG&E has easements for an existing gas line and for proposed underground and overhead cathodic protection facilities.

The purchase price for the property is \$700,000. PG&E estimates that the sale will result in an after-tax gain of \$3,253, which PG&E believes should accrue to shareholders in conformance with past decisions of this Commission stemming from its “Redding II” decision in 1989. (*Re Rate-Making Treatment of Capital Gains Derived From the Sale of a Public Utility System Serving an Area Annexed by a Municipality or Public Entity* (1989) 32 CPUC2d 233, 234.) Nevertheless, PG&E agrees with ORA that the gain-on-sale issue should be referred to R.04-09-003 for resolution.

Under the California Environmental Quality Act (CEQA), we must consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Pub. Resources Code §§ 21080 and 21065.) Under the CEQA Guidelines (Cal. Code Regs, tit. 14, § 15000, et seq.), where a project is to be approved by more than one public agency, one agency becomes

the “Lead Agency” responsible for environmental review, and all other agencies with discretionary approval over the project are “Responsible Agencies.” (Guidelines, § 15050, Pub. Resources Code § 21165.)

Here, as the public agency with responsibility for approving the project as a whole, the City of Redding is the Lead Agency for this project under CEQA and the Commission is a Responsible Agency. CEQA requires that the Commission consider the Lead Agency’s environmental documents and findings before acting upon or approving a project. (CEQA Guidelines §§ 15050(b) and 15096.) The specific activities that must be carried out by a Responsible Agency are contained in the CEQA Guidelines Section 15096.

On April 21, 2004, the City of Redding staff issued a report to the Planning Commission recommending that the project be declared categorically exempt from CEQA and that the use permit application for the River Vista Professional Office Complex be approved. The staff found that the project qualifies for a Categorical Exemption under CEQA Guidelines 15332, Class 32 In-Fill Development Projects. That exemption states:

Class 32 applies to new construction, consisting of urban in-fill development, when: (1) the project is consistent with the General Plan and zoning; (2) the activity occupies less than five acres that is surrounded by urban development; (3) the project site has no value as habitat for endangered, rare, or threatened species; and (4) approval of the project would not result in any significant effects related to traffic, noise, air quality, or water quality.

On April 30, 2004, the City of Redding as the Lead Agency issued a Notice of Exemption approving the development of an office complex consisting of six buildings totaling 44,000 square feet in a General Office District. The notice further stated: “Project is consistent with General Plan designation and policies and zoning designation and regulations. Project is in city limits on no more than

five acres, surrounded by other urban uses, and has no value as habitat for listed species. Project would not result in significant traffic, noise, air quality, or water quality impacts. Project can be adequately served by required utilities.”

Copies of this report and the city’s staff report are attached to the application as exhibits.

As a Responsible Agency under CEQA, we have reviewed these environmental documents and find them adequate for our decision-making purposes. In particular, the environmental review evaluates the planned use of the property and finds it compatible with the city’s General Plan and zoning.

Based on review of the city’s environmental documents, we believe that the city reasonably concluded that the project will not have a significant impact on the environment. We adopt the city’s findings for purposes of our approval.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3140, dated October 7, 2004, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. With the withdrawal of ORA’s protest, public hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3140 are affirmed.

6. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

7. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of this Commission.
2. Notice of the filing of the application appeared in the Daily Calendar on September 28, 2004.
3. ORA protested the application, but it subsequently withdrew its protest on the condition that gain-on-sale issues are referred to a pending proceeding, R.04-09-003.
4. Buyers are individuals who plan to construct a medical office building on the property.
5. PG&E has agreed to sell the property to Buyers.
6. The subject property is located in Shasta County.
7. The purchase and sale agreement provides that PG&E will be granted easements for an existing gas line and for proposed underground and overhead cathodic protection facilities.
8. The City of Redding is the Lead Agency for the project under CEQA.
9. The Commission is a Responsible Agency for the project under CEQA.
10. The City of Redding on April 30, 2004, issued a Notice of Exemption approving the development of an office complex on the property and concluding that the project will not have a significant effect on the environment.
11. The sale and conveyance of the property will not adversely affect existing ratepayers.

Conclusions of Law

1. A public hearing is not necessary.
2. The sale and conveyance of the property system is subject to Pub. Util. Code § 851.
3. The Commission has considered the City of Redding's environmental review documents and we find these documents adequate for our decision-making purposes.
4. We adopt the City of Redding's environmental finding that the project will not have a significant impact on the environment.
5. The sale and conveyance of the property should be approved.
6. PG&E should be authorized to enter into the purchase and sale agreement attached to the application.
7. PG&E should be directed to book gain on sale of this transaction in accordance with the final decision approved by the Commission in R.04-09-003.
8. The order should be effective today to allow the proposed sale to be executed on an expeditious basis.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) may sell and convey to Leonard Soloniuk and Linda Ruckle-Soloniuk a certain parcel of land located in Shasta County, as more fully set forth in the application and its exhibits and subject to the terms and conditions described therein.
2. PG&E shall book gain on sale from the transaction in a temporary account, pending a final decision by this Commission in Rulemaking 04-09-003, at which time such gain on sale shall be booked in accordance with that final decision.

3. The authority granted herein shall expire if not exercised within one year of the date of this order.

4. Application 04-09-021 is closed.

This order is effective today.

Dated January 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Comr. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.